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Farmers market dispute ends up in city hall

AT ISSUE ARE 'NON-COMPETE' CLAUSE, FREE RENT FOR ONE MARKET

By Michelle Ku
MKU@HERALD-LEADER.COM

Who knew the business of selling fruits and vegetables at a farmers market could be so political?

A public food fight of sorts has kicked up because of a "non-compete" clause being enforced by the Lexington Farmers Market. One local farmer says the clause led market organizers to boot him after he made it clear that he wanted to sell his heirloom tomatoes at a rival market in south Lexington.

Now the spat has a city task force looking at whether it can continue to provide free space on Vine Street for the Lexington Farmers Market on Saturdays.

The dust-up started after Roger Postley, who grows and sells heirloom tomatoes and peppers, was removed from the Lexington Farmers Market earlier this month.

Postley contends he was kicked out because he wants to sell his products at both the Lexington market and the 2-year-old Blue Grass Farmers' Market, where he's a board member.

The Lexington market says it chose not to renew Postley's contract for this year because



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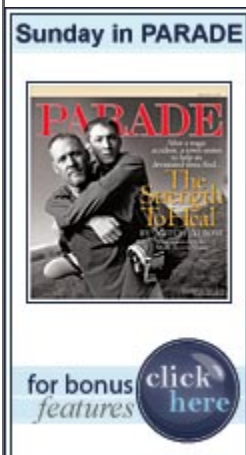
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he wanted to alter the standard contract which all of its members signed. The contract includes the non-compete clause.

Postley and the Blue Grass market turned to the Urban County Council for help.

The council was asked last week to review its arrangement with the Lexington market, which has four locations, including the popular Saturday market on Vine Street.

The non-compete clause is discriminatory because Lexington market members can sell their products wherever they want -- at stands on their farms, at markets in their home counties, at markets in other counties -- as long as they don't sell at the other farmers market in Fayette County, said Jane O'Tiernan, president of the Blue Grass Farmers' Market, which is located on Richmond Road in front of Pedal the Planet and Fastsigns.

The council set up a task force to study the issue, and it quickly learned that the city has a larger legal problem because it allows the Lexington Farmers Market to use Vine Street for its Saturday market at no cost.

"My legal concern is we are giving public-right-of way to a for-profit corporation for their use, no compensation to the government, to the detriment of any other competing for-profit ... and I'm afraid it's probably not legal," said Rochelle Boland, a city attorney.

"What if Blue Grass came to us and said, 'OK, we want the same thing. Find us a place that you can give us rent-free,'" Boland said.

To give the task force time to work out the legal problems, Councilman Don Blevins Jr. proposed a compromise for this growing season.

Blevins asked if the Lexington market could remove the non-compete clause for this year, allowing members of the Lexington market to sell at the Blue Grass market and allowing Blue Grass members to at least be able to sell at the Lexington market's Vine Street location.

"We are granting you, essentially, a huge boon on Vine Street on Saturdays," Blevins said.

Jeff Dabbelt, market manager for the Lexington market, said he would take the compromise idea to his board.

But Dabbelt cautioned that since the Lexington market's members have already signed their contracts for this year, changing the contract could open the Lexington market to a lawsuit.

The non-compete provision was added to the Lexington market's contracts with farmers for the 2006 growing season, Dabbelt said. At the time, there was speculation that a competing market planned to open, he said.

Adding the non-compete clause was a business decision to protect the market's income, the volume of products and the market's proprietary information, Dabbelt said.

"We welcome more farmers, more outlets as such and we're not saying people can't be a member of that market," Dabbelt said. "We're just saying, in our market, you can't be in theirs. You're either on the bus or off the bus for the betterment of our business, not to the detriment of the other."

Postley said he sought the council's help because he hoped the free perks the Lexington market receives could be leveraged to get the market to remove the non-compete clause.

The city bags the parking meters on the north side of Vine Street on Friday evenings, tows vehicles that park along that side of the street on Saturday morning, blocks one lane of traffic on Vine and allows the market to operate at no charge. The city also provides garbage service to the Lexington market's Tuesday and Thursday South Broadway and Maxwell Street location. (On Sundays, the market sets up on Southland Drive and in Hamburg Pavilion.)

"I do not want to hurt the Lexington market," Postley said. "I want to make it a level playing field. I have no objection to them getting the perks on Vine Street. Just quit squeezing out anybody else who doesn't get the perks because you have a monopoly."

Reach Michelle Ku at (859) 231-1335, 1-800-950-6397, ext. 1335.

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